

Appl. No. 10/734,536
Atty. Docket No. 7858MD
Amult. Dated April 25, 2007
Reply to Office Action Dated November 02, 2006
Customer Number 27752

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REMARKS

Claim Status

Claim 1 is amended to delete "carboxy-substituted polymers" from the Markush group of polymers. The claim now includes polyphosphonates or copolymers of phosphate- or phosphonate-containing monomers or polymers with other specified monomers or polymers. Claim 1 is further amended to recite the amount of polymer to be from about 1% to about 35% by weight of the composition. Support for this amendment may be found at Page 6, lines 31 to 35.

Method Claims 7 to 9 have been withdrawn as non-elected claims. However, as indicated by the Examiner, should the compositions of Claims 1 to 6 be found allowable, Claims 7 to 9 would be rejoined in accordance with the provisions of MPEP § 821.04, if the claims depend from or include all the limitations of the patentable compositions. Claim 7 has been amended to include all the limitations of Claim 1. Claims 8 and 9 depend from Claims 1 and 5 respectively.

No new matter is involved with the amendments to the claims. Consequently entry of these changes is believed to be in order and is respectfully requested.

Claims Rejection Under 35 U.S.C. §102(b)

(1) The rejection of Claims 1-2 and 5-6 as being anticipated by Zerby et al. (US 5,451,401) or Gaffar (US 4,906,456) must be withdrawn.

The previous rejection of the claims with regard to the phosphonates disclosed in Zerby has been withdrawn since Zerby's phosphonate compounds ARE NOT POLYMERIC i.e., none have repeating monomer units. Instead Zerby's compounds contain multiple phosphonate groups. However, the rejection with respect to the inclusion of carboxy-substituted polymers such as CMC and the polymers disclosed in US 4,906,456 to Gaffar has been maintained.

The claims have now been amended to exclude carboxy-substituted polymers. Therefore the rejection of the claims as encompassing disclosed polymers is rendered moot. CMC or the polymers disclosed in US 4,906,456 ARE NOT encompassed by the claimed phosphonate or phosphate polymers or copolymers. Therefore, neither Zerby nor Gaffar anticipates the present claims and the rejections must be withdrawn.

(2) The rejection of Claims 1-2 and 4 under as being anticipated by Zakikhani (US 5,980,776) must be withdrawn.

It is asserted that Zakikhani anticipates the present claims as it discloses use of phosphonate polymers for applications such as dental cements and as mouthwash chemicals.

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It is respectfully submitted that Zakikhani does not disclose each and every element of the present claims and therefore does not anticipate. There is no disclosure or even a remote suggestion whatsoever in Zakikhani regarding the use of the present polymers to deposit a surface conditioning film onto teeth, that such deposited film would result in increased hydrophilicity of the tooth surface and would decrease pellicle film thickness and that such modification of teeth would provide consumer desirable clean teeth and smooth teeth perception that would last for extended periods of time. The passing mention in Zakikhani of the potential use of phosphonate polymers in dental cements and as mouthwash chemicals does not constitute anticipation. There is no disclosure of what amounts of polymer to use and how to formulate oral care compositions that would provide the present claimed benefits.

Therefore the rejection of the claims under 35 USC §102(b) should be withdrawn.

(3) The rejection of Claims 1-2 and 4-6 as being anticipated by Degenhardt et al. (US 4,877,603) must be withdrawn.

As in the case of Zakikhani, there is no disclosure or any suggestion whatsoever in Degenhardt et al. regarding the use of the present polymers to deposit a surface conditioning film onto teeth, that such deposited film would result in increased hydrophilicity of the tooth surface and would decrease pellicle film thickness and that such modification of teeth would provide consumer desirable clean teeth and smooth teeth perception that would last for extended periods of time. Degenhardt's disclosure is limited to anticalculus and antiplaque effects.

Claims Rejection Under 35 U.S.C. §103(a)

The rejection of Claims 1-2 and 4-6 as obvious over Glandorf (US 6,187,295) in view of Bartels et al. (J. of Dentistry, 7(3), 1979) must be withdrawn.

This rejection is traversed because Glandorf (US 6,187,295) is not available as prior art against the present application under 35 USC §103(c).

Glandorf (US 6,187,295) issued on February 13, 2001 on an application filed November 30, 1998. The present application has a priority date of November 12, 1999, which is less than 1 year later from the Glandorf filing date. This means that the Glandorf patent only qualifies as prior art under 35 USC §102(e). Furthermore, the present application and Glandorf were, at the time the claimed invention was made, owned by, or subject to an obligation of assignment to, The Procter & Gamble Company.

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Therefore, since the current application has an effective filing date of November 10, 2000 [after November 29, 1999, the effective date of 35 USC §103(c)], it is contended that Glandorf is not available as a reference under 35 USC §103(c).

Even if Glandorf were available as a reference, it is respectfully submitted that the combination of Glandorf with Bartels does not establish a *prima facie* case of obviousness because the combination does not teach or suggest all of the claim limitations. In particular, there is still no teaching or suggestion that the claimed polymers would deposit a surface conditioning film onto teeth, that such deposited film would increase hydrophilicity of the tooth surface and would decrease pellicle film thickness and that such modification of teeth would provide consumer desirable clean teeth and smooth teeth perception that would last for extended periods of time.

Obviousness-Type Double Patenting Rejection

In the interest of advancing prosecution of this case, Applicants are prepared to file a terminal disclaimer to commonly-assigned US 6,821,507 upon indication of allowable claims. This should overcome the obviousness-type double patenting rejection of Claim 1 over Claims 1, 3 and 4 of the '507 patent.

CONCLUSION

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented, withdrawal of the claims rejection under 35 USC §102(b) and §103(a), withdrawal of the double-patenting rejection, withdrawal of the restriction requirement and rejoining of method Claims 7 to 9 and allowance of all claims are respectfully requested.

The Examiner is respectfully invited to telephone the undersigned representative if she believes an interview might be useful to advance prosecution of this case.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By Emelyn L. Hiland
Emelyn L. Hiland
Agent for Applicant(s)
Registration No. 41,501
(513) 622-3236

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